

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL W. HALIBURTON, II,

CV. 04-6062-KI

Plaintiff,

ORDER

v.

CITY OF ALBANY POLICE
DEPARTMENT, et al.,

Defendants.

KING, Judge

Plaintiff, an inmate at the Santiam Correctional Institution, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that between October, 1999, and April, 2004, he was subjected to harassment and retaliation by the defendant police officers. Currently before the court are plaintiff's motion to compel (#58), and motion for extension of time and appointment of counsel (#60).

DISCUSSION

I. Motion to Compel.

Plaintiff moves the court to compel defendants to fully respond to his requests for interrogatories and production of

documents. The motion itself does not include a copy of the pertinent discovery requests or defendants' response thereto. However, on April 26, 2005, defendants filed with the court their supplemental responses to plaintiff's discovery requests which appear to set forth the pertinent requests and responses thereto.

Defendants move to deny the motion to compel on the basis that it was filed four days after the close of discovery. Because plaintiff is a prisoner proceeding *pro se*, the motion was signed by plaintiff on the discovery deadline, the certificate of mailing indicates that the motion was placed in the mail on the discovery deadline, and defendants have offered no contrary evidence as to the date of mailing, I conclude that the motion is timely under the prisoner mailbox rule. See Caldwell v. Amend, 30 F.3d 1199, 1201-03 (9th Cir. 1994).

Based upon my review of the parties' pleadings, plaintiff's motion to compel is denied as to his request for interrogatories as follows: requests one, four, and six are denied on the basis that any information, in addition to that provided by defendants, should have been sought through a request for production; request two is denied as overbroad; and requests three and five are too indefinite to compel a response and the information should have been sought through a request for production of the specific written policies and procedures.

Plaintiff's motion to compel the production of documents is granted in part and denied in part as follows: requests two, five, and eight are denied as overbroad; request four¹ is denied as overbroad and redundant of requests three and seven; request three is granted, request six is granted as to non-privileged reports generated between 1999 and 2004. Defendants shall produce the documents responsive to requests three and six, as outlined above, within 15 days of the date of this order.²

II. Motion for Extension of Time, Transfer, and Appointment of Counsel.

Plaintiff moves for the appointment of counsel and, in the alternative to be transferred to the Oregon State Prison Minimum Security Facility. Plaintiff's request for counsel has been denied on four previous occasions. The renewed motion for counsel is denied for the reasons previously stated by the court. Plaintiff's motion to be transferred is construed as a motion for a mandatory injunction and is denied.

Plaintiff's alternative motion for extension of time is granted to the extent that plaintiff shall file a response to

¹ Plaintiff's request for a copy of a complaint sent to the FBI (contained in request number four) is denied based upon defendants' representation that it does not exist. If the complaint does exist, and is authored by one of the named defendants between the years 1999 and 2004, it shall be produced.

² It appears from the defendants' supplemental response that all non-privileged documents responsive to requests for production one, seven, and nine have been produced.

defendants' motion for summary judgment on or before August 31, 2005.

CONCLUSION

Based on the foregoing, plaintiff's motion to compel (#58) is GRANTED IN PART AND DENIED IN PART, plaintiff's motion for the appointment of counsel and to be transferred (#60-1) is DENIED, and plaintiff's motion for extension of time (#60-2) is GRANTED to the extent that plaintiff shall file his opposition to defendants' motion for summary judgment on or before August 31, 2005. Defendants may file a reply within 11 days thereafter. Defendants' motion for summary judgment (#50) shall be taken UNDER ADVISEMENT on September 19, 2005.

IT IS SO ORDERED.

DATED this 20th day of June, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge